

1948

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## EASTERN

1948

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BRUNEI

CLOSED C.O.  
UNTIL

1999

C.O. 943/1/7

EnactmentsThe Courts (Amendment) Enactment 1948 No. 5.

Previous

See 59709/2/17

Mr Scott

1/2  
21/4

Mr Scott

9/5

Mr. Leibiger.

10/5

Sir S. Abrahams

1/5

Mr. Scott

13/5

PUT BY



Subsequent

H531

8/9

Mr Ashton

1) Library Legal

10/9.

2) Mr Ashton

22/10

Mr G. Whiteley

23/10

H531

20/11

PUT BY

H531 PUT BY H531

25/12

Mr Ashton

20/12

H531

20/1

Mr Ashton

21/1

H531. PPUT BY

21/10

Mr Ashton

21/4

H531. PPUT BY

21/10

Mr Ashton

1/1

H531. PUT BY

1/2

59709/13

✓ 200  
1982

1. Sarawak — Law 238 — S. 8. 48<sup>2</sup>  
legal observations on this Ordinance  
are given in Dr Solley Abraham's min.  
of 22/9 and 8/10 and Mr. Roberts-  
Wray's min. of 7/10 on 59706/48.  
R.G.Ashken 22/10.

I think we'd better hold over our observations  
on this bill until further progress has been  
made on the Appeal arrangements despatch.

G.E.W.

23/10.

~~23/4~~ B.U. monthly to note progress on  
"Court of Appeal" file. R.G.Ashken 23/10.

~~fbw~~

No progress yet. B.U. monthly.

R.G.Ashken  
20/11

~~fbw~~

Mr Ashton.

B.U. v min 20/11.

O. Owen-Flood  
20/11.

B.U. 20 Jan.

R.G.Ashken  
20/11.

~~fbw~~

B.U. v min above.

O. Owen-Flood. 28/1.

~~2~~ In view of Mr. Kirkness's min. of 18/1 on  
55362/48, B.U. 3 months.  
K. Ashton  
20/1.

3

~~3~~

B.U. v. min. of 25/1 above

~~P~~  
P 29/4

✓

Discussion proceeds on 55362/48,  
but it seems unlikely that a  
decision on Courts of Appeal will  
be reached for a long time.

B.U. 6 months.

~~21~~  
10.

K. Ashton  
24/4

✓

~~3~~

B.U. v. min. above.

D.O.-Flood 2 $\frac{1}{10}$ .

No progress.

B.U. 3 months.

K. Ashton  
1/1.

~~3~~  
25

~~3~~

B.U. of above note.

1/2.

✓

legal observations on this Ord. are given in Sir S. Abrahams min. of 22/9 and 8/10 and Sir K. Roberts-Wrae's min. of 7/10 on 59706/48. (circulating in legal dept.)

Our obsns. have been held pending decision on Courts of Appeal arrangements but I think we shd. now wait no longer but send our obsns. to High Court Brunei.

M. Scott  
9/5

Very well,

S.S. Abrahams

I have had a word with Sir Sidney. 12/5 -

In the circs. with the Reorganisation of the Judiciary & as we hope, of the judicial system of the 3 Borneo Territories, about to take shape, there would be little point in forwarding the observations on Brunei Enactment no 5 of 1948 which has now been in operation for nearly 2 years. Sir Sidney agrees.

The enactment & observations shd. however be kept in view for consideration when the proposals for the new set up are examined.

G.C.W.  
15/5.

H.531.

Pl. note X of Sir G. Whiteley's min. of 15/5 and B.V. when proposals for limited judiciary come up. In the meantime, per by.

M. Scott  
15/5

Min. 15/5 noted  
in Reorganisation of Judiciary file  
58930/50

H.531. 17/5.

R The Ord at (1) was repealed by Brunei 18/51 - The Courts Enactment.

C. Butcher (lib Legal)  
16/2/54.

PAS/SPH.

Ref: 10/HCO/14.

C.S.O. 28.

SAVING.

5 |

From the Governor of Sarawak.

To the Secretary of State for the Colonies.

Date..... 51 August, 1948.

No. 238 Saving.



I enclose 10 copies each of  
Brunei Enactments Nos. 5 and 6 of 1948.

V/14.

Feb

# STATE OF BRUNEI

## ENACTMENT NO. 5 OF 1948.

An Enactment to amend the Courts Enactment, 1908.

L. H. N. Davis, M.C.S.  
British Resident,  
Brunei.

4th June, 1948.

IT IS HEREBY ENACTED by His Highness the Sultan in Council as follows:—

**1.—**This Enactment may be cited as the Courts (Amendment) Enactment, 1948, and shall come into operation on the 4th day of June, 1948.

Short title  
and operation.

**2.—**Section 2 of the Courts Enactment, 1908, hereinafter referred to as the Principal Enactment, is amended by deleting the words "the Straits Settlements" in the definition of "The Colony" and substituting therefor the word "Singapore" and by deleting all the definitions which follow and substituting therefor the following definitions:—

Amendment  
to section 2  
of the  
Principal  
Enactment.

"'The Judge of Appeal' means the Chief Justice of Sarawak."

Amendment  
to section 4.

**3.—**Section 4 of the Principal Enactment is amended by deleting in subsection (i) the words "the District Judge of the District Court of Labuan or any District Judge of the Colony of the Straits Settlements" and substituting therefor the words "a Circuit Judge of one of the Circuit Courts of the Colony of Sarawak".

**4.—**Section 14 of the Principal Enactment is repealed and the following section is substituted therefor:—

New section  
14.

"Confirmation of death sentence." 14.—(i) When the Court of a Resident passes a sentence of death a certified copy of the proceedings shall be submitted without delay to the Judge of Appeal and the sentence shall not be effective unless and until confirmed by the Judge of Appeal.

(ii) In a case submitted to him for confirmation under this section the Judge of Appeal may confirm the conviction and sentence or may exercise any of the powers which he might exercise on hearing an appeal.

(iii) No party has any right to be heard before the Judge of Appeal when exercising his powers of confirmation and such powers may be exercised in Chambers.

(iv) No order of confirmation shall be made until the period allowed for lodging an appeal has expired, or, if an appeal is lodged within such period, until such appeal is disposed of".

Amendment  
to section 15.

**5.**—In section 15 (i) of the Principal Enactment the words "Court of Appeal sitting within the Colony" are deleted and the words "Judge of Appeal sitting within the State" are substituted therefor; and in the marginal note and in section 15 (ii) the word "Court" is deleted in each case and the word "Judge" is substituted therefor.

New sections  
16 and 16A.

**6.**—Sections 16, 16A, 16B and 16C of the Principal Enactment are repealed and the following sections are substituted therefor:—

"Criminal appellate jurisdiction of Judge of Appeal".      **16.**—(i) An appeal shall lie to the Judge of Appeal sitting within the State from any decision of the Court of the Resident—

(a) in the exercise of its original criminal jurisdiction in any case where a person has been sentenced to not less than six months' imprisonment or to a fine of not less than one hundred dollars or in any other case with the leave of the Judge of Appeal;

(b) in the exercise of its appellate criminal jurisdiction, with the leave of the Resident, or with the leave of the Judge of Appeal if the Resident has refused leave to appeal and the appeal is on a point of law.

(ii) An appellant shall give notice of his appeal by lodging within ten days from the date of such decision with the Court of the Resident a notice of appeal in triplicate addressed to the Judge of Appeal and by paying at the same time a fee of one dollar

Every notice of appeal shall contain an address at which any notices or documents connected with the appeal may be served upon the appellant or upon his advocate.

(iii) When a notice of appeal has been lodged the Court of the Resident shall make a signed copy of the grounds of decision in the case and cause the same to be served upon the appellant or his advocate by leaving the said copy at the address mentioned in the notice of appeal, or by posting it by registered post addressed to the appellant at the said address.

(iv) Within ten days after the copy of the grounds of decision has been served as in the last preceding subsection provided, the appellant shall lodge with the Court of the Resident a petition of appeal in triplicate addressed to the Judge of Appeal.

(v) Every petition of appeal shall state shortly the substance of the decision appealed against and shall contain definite particulars of the points of law or of fact in regard to which the Court of the Resident is alleged to have erred.

(vi) The Court of the Resident may, in its discretion, require the appellant to give security for the costs of appeal in such sum not exceeding five hundred dollars as it considers reasonable.

(vii) If a petition of appeal is not lodged within the time prescribed by this section the appeal shall be deemed to have been withdrawn and the Court of the Resident shall enforce its sentence or order if any stay of execution has been granted.

(viii) When the appellant has complied with the provisions of this section the Court of the Resident shall transmit to the Judge of Appeal a signed copy of the record of the proceedings and of the grounds of the decision together with a copy of the notice and of the petition of appeal.

(ix) The Court of the Resident or the Judge of Appeal, if the case is one in which the Judge of Appeal could give leave to appeal under the provisions of paragraph (b) of subsection (i) of this section, may on the application of any person desirous of appealing who is debarred from so doing upon the ground of his not having observed some formality or some requirement of this Enactment, permit an appeal on such terms

and with such directions as the Court considers desirable in order that substantial justice may be done in the matter.

Summary dismissal of appeal in criminal cases.

**16A.**—(i) On receiving the documents mentioned in subsection (viii) of section 16 the Judge of Appeal shall peruse the same, and if he considers that there is no sufficient ground for interfering he may dismiss the appeal summarily: Provided that no appeal shall be dismissed summarily, except in the case mentioned in subsection (ii), unless the appellant has had a reasonable opportunity of being heard personally or in writing in support of the same.

(ii) Where an appeal is brought on the ground that the conviction is against the weight of the evidence or that the sentence is excessive and it appears to the Judge of Appeal that the evidence is sufficient to support the conviction and that there is nothing in the circumstances of the case which could raise or lead him to consider that the sentence ought to be reduced the appeal may without being set down for hearing be summarily dismissed by an order certifying that the appeal has been lodged without any sufficient ground of complaint".

Amendment to section 17.

**7.**—In section 17 of the Principal Enactment the words "Court of Appeal or of the Supreme Court" are deleted and the words "Judge of Appeal" are substituted therefor; and a consequential amendment is made in the marginal note.

Amendment to section 18.

**8.**—Section 18 of the Principal Enactment is amended by placing a full-stop after the words "His Majesty in Council" where they secondly appear and deleting the words which follow.

Amendment to section 19.

**9.**—Subsection (ii) of section 19 of the Principal Enactment is repealed and the marginal note is amended by deleting the words "and in appeals therefrom".

New section 21.

**10.**—Section 21 of the Principal Enactment is repealed and the following section is substituted therefor:—

"Procedure in appeals to the Judge of Appeal.

**21.**—The procedure to be followed in appeals from the Court of a Resident to the Judge of Appeal shall be that prescribed under the Courts Ordinance or in the Criminal Procedure Code respectively of the Colony of Sarawak."

10  
END

**11.**—Section 23 of the Principal Enactment is amended as follows:—

Amendments to section 23.

(i) Subsection (i) is amended by adding the words “of the Colony” after the words “Supreme Court”.

(ii) Subsection (ii) is repealed.

(iii) In subsection (iii) the words “When any person is tried under this section by the Resident or by a Judge of the Supreme Court sitting within the State” are deleted and the words “In any case where such person shall be committed for trial” are substituted therefor.

(iv) Subsection (vii) is repealed.

**12.**—Section 24 of the Principal Enactment is amended as follows:—

Amendments to section 24.

(i) Subsection (i), (ii) and (iii) are repealed.

(ii) The marginal note to subsection (iv) is amended to read “Procedure after sentence of death has been confirmed”.

(iii) In subsection (iv) the words “pronounced by a Judge of the Supreme Court whether sitting in the Colony or in the State and provided that such sentence has not been appealed from under the provisions of section 16 (i) hereof” are deleted and the following words are substituted therefor, namely, “confirmed by the Judge of Appeal under section 14 (i) hereof”.

59709/13

Enactments. The Courts (Amendment) Enactment 1948 No 5. 1948.  
MS Records of the British Colonial Office CO 943/1/7. The National  
Archives (Kew, United Kingdom). State Papers Online Colonial,  
[link.gale.com/apps/doc/GZUPWP332885925/SPOC?](link.gale.com/apps/doc/GZUPWP332885925/SPOC?u=omni&sid=bookmark-SPOC&pg=1)  
u=omni&sid=bookmark-SPOC&pg=1. Accessed 20 Dec. 2024.